IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 15167 of 2004

Between:

1 T.Venkateswarlu S/o. Venkata Ramana
s/o. Subba Rao aged about 54 years working as Accountant
Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.
2 V.Seetharam S/o. Janaki Ramaiah, Working as Secretary,
Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.
3 U.Subbaiah S/o.Subrahmanyam, Working as Senior Clerk,
Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.)
4 B.Ravi Kumar S/o. Papa Rao, Working as Asst. Accountant,
Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.)
5 K.V.V.S.Ramachandra Rao S/o. Veerabhadra Rao, Working as Clerk-cum-Typist, Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.
6 G.V.R.Prasad S/o. Venkat Rao, Working as Cl;erk-cum- Cashier, Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.
7 P.Ramakrishna S/o. Satyanarayana Murthy, Working as Cashier, Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255
8 Y.Satyanarayana S/o. Pentaiah, Working as Collection Agent,
Ramachandrapuram Cooperative urban Bank Limited,
Ramachandrapuram, East Godavari District-533 255.
9 V.Parthasarathi S/o. Surya Rao, Working as Collection Agent,
Ramachandrapuram Cooperative urban Bank Limited,
Ramachandrapuram, East Godavari District-533 255.)
10 G.Narayana Rao S/o. Chandraiah, Working as Attender,
Ramachandrapuram Cooperative urban Bank Limited,
Ramachandrapuram, East Godavari District-533 255.
11 A.V. Ramana S/o. Neelaiah, Working as Attender,
Ramachandrapuram Cooperative urban Bank Limited,
Ramachandrapuram, East Godavari District-533 255.

12 K.Thami Raju S/o. Satyanarayana, Working as Nigh Watchman, Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.
13 K.Veeraju s/o. Venkata Ramana, Working as Attender, Ramachandrapuram Cooperative urban Bank Limited, Ramachandrapuram, East Godavari District-533 255.

..... PETITIONERS

AND

1 The Commissioner for Cooperation and The Registrar of Cooperative Societies A.P. Hyderabad.
2 The Additional Registrar-II O/O the Commissioner for Cooperation and the Registrar of Cooperative Societies, A.P. Hyderabad.
3 The Divisional Cooperative Officer, Rajahmundry, East Godavari District.
4 The District Cooperative Officer, Kakinada, East Godavari District.
5 The Managing Committee, The Ramachandrapuram Cooperative Urban Bank Limited, Ramachandrapuram, East Godavari District rep by its President.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of writ of mandamus; a) Declaring the action of the respondents in not revising the staffing pattern in terms of Section116 (C) of the A.P. Cooperative Societies and paying the salaries on consolidated wages instead of the pay scales is arbitrary, illegal, violative of Articles 14 and 16 of the Constitution of India. b) Direct the respondents to continue to pay the salaries in the pay scales that have been approved by the Registrar of Cooperative Societies Vide proceedings dated.10.1.1995 and further direct the 5th respondent to revise the staffing pattern in terms of Section 116 (C) of the Cooperative Societies Act by duly rationalizing the staffing pattern either by retrenchment or by Voluntary Retirement Scheme.

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents No1 to 4: GP FOR COOPERATION

Counsel for the Respondent No.5: Smt.B.Vijaya Lakshmi

The Court made the following:

THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.15167 OF 2004

ORDER:

For not revising the staffing pattern in terms of A.P. Cooperative Societies Act and paying the salaries and consolidated wages in spite of pay scales with consequential direction to pay the salaries, the present writ petition is filed.

The brief facts that are necessary for the disposal of the writ petition are as follows:

The 5th respondent bank has passed resolution dated 10.12.1993 approving the staffing pattern and the pay scales to its employees. The Registrar, Cooperative Societies had also approving the staffing pattern as well as the pay scales of the employees working in the 5th respondent bank dated 10.01.1995 under Section 16 (c) of the A.P. Cooperative Societies Act. The 5th respondent bank duly framing the Service Rules for its employees. The Registrar, Cooperative Society also approved and ratified the same. The petitioners were appointed as against the sanctioned strength and approved post of the 5th respondent bank and some of the petitioners were given promotions as per their Service Rules. The petitioners are drawing the pay scales as extended by the 5th respondent bank which was approved by the Registrar of Cooperative Societies from time to time under Section 116 (c) of A.P. Cooperative Societies Act. The gross profit of the 5th respondent bank was Rs. 19,10,842/- for the Cooperative year 2003-2004 and the total working capital of the 5th respondent was Rs.4,85,25,620.91 Ps for the Cooperative Year 2003-2004. The board of management by its resolution dated 19.04.2003 reduced the salaries of the staff

in terms of 116 (c) of the Cooperative Societies Act and sought necessary information from the incharge Secretary with regard to 2% of the working capital or 30% of the gross profit and till such time directed that the salaries of the employees of the 5th respondent bank should be stopped. Some of the petitioners filed W.P.No.3877 of 2003 seeking direction to continue to pay the pay scales to the petitioners as approved by the Registrar of Cooperative Societies. An interim direction was given, but later it was modified to pay the salaries in accordance with the provisions of 116© of the Co-operative Societies Act. The petitioners made a detailed representation dated 19.08.2004 to the 5th respondent requesting not to pay the consolidated wages as the regular scale of pay was extended to all the petitioners in terms of 116 (c) of the Cooperative Societies Act. Therefore, the action of the respondent is arbitrary and illegal. The grievance of the petitioners is that they were selected through a selection process and the respondent cannot unilaterally reduce the service conditions. As per 116(c) of Cooperative Societies Act, the 5th respondent bank has to revise the staffing pattern and pay scales, but the 5th respondent bank has not revised the staffing pattern nor revised the pay scales. Without revising the same, the respondent society cannot reduce the salaries of its employees and pay the salaries on consolidated basis and hence the present writ petition is filed.

The 5th respondent bank filed Counter-affidavit stating that in view of the amendment to Section 116(c) of the Cooperative Societies Act, the respondent bank had to revise its staffing pattern and pay structure of the employees and accordingly the 5th respondent bank had passed a resolution dated 19.04.2003 resolving that the staff costs and contingencies should be limited to 2% of the working capital with effect from 01.04.2003. Challenging the same, the petitioners filed the writ petition No.8929 of 2003. Initially interim orders were granted on 06.05.2003, later they were modified with regard to payment of salary in accordance with 116(c) of A.P. Cooperative Societies Act. Against the said modification, writ appeal is filed and the same was dismissed. Thereafter, 5th respondent bank passed resolution resolving to pay consolidated salaries to all the staff in accordance with Section 116(c) of the Co-operative Societies Act. The bank did not receive any representation from the petitioners

requesting not to pay consolidated wages to the petitioners. The 5th respondent bank is having an accumulated loss of Rs.25,00,000/-. As per financial settlement of the 5th respondent bank for the year ending 31st March, 2004 discloses 30% of the gross profit being Rs.5,70,552/- and 2% of the working capital is Rs.9,17,000/-. Therefore, 30% of the gross profit in terms of actuals whichever is less, has to be taken for incurring expenditure against the salaries of the employees. The petitioners have withdrawn the regular pay scales till June, 2004. For payment of salaries, Rs.3,78,000/- has been spent and an amount of Rs.1,92,552/- is left for the remaining financial period of nine months. Therefore, the 5th respondent bank is not in a position to pay the salaries. The Reserve Bank of India in its report found that the 5th respondent bank has observed that some of the employees of the respondent bank has to be retrenched vide proceedings No.22311/2002/02/UB-1, dated 28.07.2004. The 4th respondent issued proceedings dated 12.7.2004 directing the 5th respondent to take immediate action under section 116(c) of the A.P. Co-operative Societies Act. Sections 116-AA and 116(c) of the A.P. Co-operative Societies Act were upheld by the Court in a decision reported in 2002(4) ALD 527. By its resolution dated 30.08.2004 passed by the 5th respondent in terms of Section 116(c) of the A.P. Co-operative Societies Act to retrench the petitioners 5 to 7,9,12 and 13 with effect from 31.08.2004. Accordingly they were given one months pay in lieu of one months notice, which was received by them. The 8th petitioner was removed from service vide proceedings dated 31.08.2004. Hence, they are no longer in service. The petitioners 1 to 4 and 10 and 11 are continuing in service of the 5th respondent bank. The 5th respondent bank was not in a position to pay the salaries of all the 13 petitioners and no option to retrench for some of them.

The 5th respondent also filed additional counter giving gross income statement of the bank. As per the said statement, the 5th respondent bank is having nil gross profits to pay regular salaries to the balance staff.

Learned Counsel appearing for the petitioners contended that the respondent cannot unilaterally modified the service conditions by not extending the regular

pay scales to that of consolidated wages. Therefore, it is arbitrary and illegal and as per Section 116© of the Cooperative Societies Act, the 5th respondent bank must revise the pattern of staff, scales and other allowances to the employees and after retrenchment the 5th respondent bank can pay the salaries within the limits of Sections 116© of Cooperative Societies Act and he prays to direct the respondent to revise the staff pattern and continues to pay the regular pay scales.

On the other hand, the learned Standing Counsel for the respondent 1 to 4 contended that as the 5th respondent bank is getting losses, it could not be in a position to pay the salaries. Therefore, after retrenchment some of the employees paying consolidated pay and it is within the purview of 116 © of the A.P. Co-operative Societies Act and there are no grounds to interfere with the same.

Learned Standing Counsel for the 5th respondent bank contended that even after retrenchment of seven employees from the bank, there are nil gross profits to pay regular salaries to the balance staff and consolidated pays the present strength and consolidated wages are being paid in accordance with Section 116© of the A.P. Co-operative Societies Act and there are absolutely no grounds to give any direction.

It is not in dispute before this Court that after amendment to Section 116(c) of the A.P. Cooperatives Act 1964 substituted to Act 22 of 2001 the 5th respondent bank shall have the power to fix the staffing pattern, qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar, Co-operative Societies subject to condition that expenditure towards the pay and allowances of the employees shall not exceed 2% of the working capital or 30% of the gross profit in terms of the actuals in a year whichever is less. The validity of Section 116(c) of the Cooperative Societies Act is upheld by this Court in writ petition No.28473 of 1997 reported in 2002(4) ALD 527, dated 12.07.2002. Wherein it is held

> “It is needless to reiterate that the societies are formed by the people themselves on the principle that, all for one and one for all. The societies are organized and registered under the provisions of the Act and meant to cater

> the needs of its members. The Societies are not meant for providing any employment to the unemployed. It is neither the function nor the duty of the Societies to provide any job or employment to the unemployed. The society is found to keep its financial status and availability for resources in view while making the appointment as well as fixing the staffing pattern, pay scales, and other allowances for its employees. The societies cannot be permitted to in discriminately appoint the employees and fix their pay any due regard to its financial resources. Having regard to the experience that some societies have altogether vanished into thin air on account of such indiscriminate appointments and fixation of pay scales and other allowances, the Legislature has stepped in and put an embargo upon the societies not to incur expenditure towards the pay and allowances of the employees exceeding two percent of the working capital or 30 percent of gross profit, in terms of actuals in a year, whichever is less. The object is a laudable one. The provision is obviously amended in order to protect the interest of the societies and to save them from further financial ruination. "

It is further held that "matters relating to fixation of staffing pattern of the society, prescription of qualification and determination of pay scales and other allowances for its employees have to be left to the concerned society itself, inasmuch as the society, keeping in view of its size, volume of work and resources could pragmatically manage its affairs."

Section 116(c) of the A.P. Co-operative Societies Act reads: " A society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two percent of the working capital thirty percent of the Gross profit, in terms of actuals in a year whichever is less.

2). No appointment or removal of a Chief Executive by whatever name called of any society, or class of societies as may be prescribed which are in receipt of financial aid from the Government, shall be made without the prior approval of the Registrar of Cooperative Societies."

Therefore, in view of the substituted provision by Act 22 of 2001 it is for the petitioners plead and establish that the 5th respondent society has to revise the staffing pattern and also payment of salaries to its employees. It is stated by the writ petitioner in the affidavit that gross profit of the 5th respondent bank was Rs.19,10,842/- for the Cooperative year 2003-2004 and the working capital of the 5th respondent bank was Rs.4,85,25,620.91Ps for the Cooperative year 2003-2004 and therefore the working capital comes out to Rs.9,17,000/- and 30% of the gross profit comes to Rs.5,70,000/-. But the respondents filed Additional affidavit stating that the gross income of the bank as on 31.3.2004 is Rs.19,01,842/- and 30% of the gross income is Rs.57,000/-; the salaries of the petitioners i.e., 13 members is Rs.1,256,255/- and after paying the salaries the balance is Rs.1,32,251/-. On 31.08.2004, seven employees were retrenched from the bank and one month salary paid to them i.e., Rs.14,922/- and after retrenchment, remaining six employees were paid for the month of September 14,570/-. The statement has been incorporated in the additional affidavit. According to this affidavit, there are nil gross profits to pay regular salaries to the balance staff. An amount of Rs.80,00,000/- including the prematured fixed deposits were withdrawn from the bank by the depositors. An amount of Rs.62,00,000/- was obtained as loan from the depositors with the District Cooperative Central Bank and 2% interest is being paid on the said loan. The gross income statement as furnished by the 5th respondent bank is not denied or disputed. So, the 5th respondent bank has taken a specific plea that it is getting nil profits remained unchallenged. Such is the case there is no need for the 5th respondent to revise the staffing pattern. It is also specifically stated that the 5th respondent bank is accumulated loss of Rs.25,00,000/- and the 5th respondent bank is not in a position to pay regular salaries to the remaining employees after retrenching some of the employees for the Cooperative Year 2002-2003. Under these circumstances, there is no need to pay the regular scales to the remaining employees considering 2% of the working capital or 30% of the gross profit in a year terms of actuals, whichever is less and the staffing pattern has been reduced and consolidated amounts have been fixed. The action of the respondents is completely in accordance with Section 116(c) of the A.P. Co-operative Societies Act. Therefore a mandamus cannot be issued directing the respondent to ensure payment of salaries in accordance

with the provisions of Section 116(c) of the A.P. Cooperative Societies Act. There is no factual foundation with regard to revising the staffing pattern and to pay the salaries in the pay scales. Therefore, the petitioner is not entitled for any relief as prayed for. Since the staffing pattern and payment of emoluments is completely within Section 116(c) of A.P. Co-operative Societies Act. No direction need be given. It is made it clear that the observations in this writ petition are given basing on the pleadings of the parties. The same will not have any binding precedent for the subsequent orders.

With the above observations, the writ petition is dismissed.

.02.2005

MRKR

To

1 The Commissioner for Cooperation and The Registrar of Cooperative Societies A.P. Hyderabad.
2 The Additional Registrar-II O/O the Commissioner for Cooperation and the Registrar of Cooperative Societies, A.P. Hyderabad.
3 The Divisional Cooperative Officer, Rajahmundry, East Godavari District.
4 The District Cooperative Officer, Kakinada, East Godavari District.
5 The President, Ramachandrapuram Cooperative Urban Bank Limited, Ramachandrapuram, East Godavari District.

6 Two C.Cs to the Government Pleader for Cooperation, High Court Buildings, Hyderabad.(OUT)

7 Two C.D. copies.